

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF NOLIN RURAL	)	
ELECTRIC COOPERATIVE CORPORATION	)	
FOR A DEVIATION FROM THE	)	CASE NO. 94-357
SETTLEMENT AGREEMENT OF 10/11/90	)	
IN CASE NO. 90-064	)	

O R D E R

On September 23, 1994, Nolin Rural Electric Cooperative Corporation ("Nolin") filed an application for a deviation from the Settlement Agreement approved by the Commission's October 31, 1990 Order in Case No. 90-064.<sup>1</sup> Nolin stated that the Settlement Agreement obligated it to retire capital credits of \$674,147<sup>2</sup> in 1994 but that no payments can be made due to a lack of funds. To further support the deviation, Nolin cited a deferred power bill owed to its wholesale power supplier, East Kentucky Power Cooperative, Inc. ("East Kentucky"), and the significant negative impact of three storms in 1994 on its overall financial condition.

The deviation requested by Nolin is to defer the 1994 payment of capital credits until such time that Nolin's board of directors and management determine that it is fiscally responsible to pay

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<sup>1</sup> Case No. 90-064, The Notice of Nolin Rural Electric Cooperative Corporation's Revision to Its Electric Tariffs.

<sup>2</sup> In response to the November 22, 1994 Order, Nolin revised the capital credit retirement to \$687,402. Response to Item 10.

such credits. The Commission previously granted Nolin deviations to delay the capital credit payments required in 1991 and 1992.<sup>3</sup>

Under the terms of the Settlement Agreement, Nolin is required to apply total margins in excess of a 1.5 Times Interest Earned Ratio ("TIER") to the retirement of capital credits to its members. The Settlement Agreement also requires Nolin to make a good faith effort to reduce its equity level. Further, the Settlement Agreement provides that Nolin may be relieved of its obligation to retire capital credits only when, due to circumstances beyond its control, the Rural Utilities Service ("RUS")<sup>4</sup> or the National Rural Utilities Cooperative Finance Corporation ("CFC") have suspended or discontinued advancing loan funds to Nolin.

Nolin provided no financial information, workpapers, or calculations to support its request for a deviation, despite Commission instructions to do so when the last deviation was granted.<sup>5</sup> However, responses to a data request indicate that Nolin lacks adequate cash funds to make the \$687,402 retirement. Although Nolin has a substantial line of credit with CFC, no draw downs can be made due to the outstanding deferred power bill.<sup>6</sup> Nolin provided information showing that its equity level has decreased over a 15-month period, from 58.36 percent in July 1993

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<sup>3</sup> Case No. 90-064, Orders dated December 20, 1991 and December 18, 1992.

<sup>4</sup> Formerly the Rural Electrification Administration ("REA").

<sup>5</sup> Case No. 90-064, Order dated December 18, 1992, at 5.

<sup>6</sup> Response to the November 22, 1994 Order, Item 3.

to 54.26 percent in October 1994.<sup>7</sup> At the time the Settlement Agreement was approved, October 31, 1990, Nolin's equity level was at 61.6 percent.

Nolin provided no documentation to indicate that the RUS or CFC had suspended or discontinued advancing loan funds to Nolin. In fact, Nolin stated that it had RUS approval for a loan covering the work performed under its current two-year work plan, but it had not received the formal loan documents.<sup>8</sup>

The application states that Nolin is on a nine-year capital credit rotation cycle, but Nolin's financial outlook indicates that it will be unrealistic to stay on that rotation cycle. Nolin indicated that it was in the process of formulating a new equity management plan based on a 15-year rotation cycle and the issue of paying capital credits would be addressed in its forthcoming application related to a decrease in the cost of power purchased from East Kentucky. However, Nolin has now filed that application, Case No. 94-402,<sup>9</sup> and disclosed that no formal changes to its equity management plan have been made,<sup>10</sup> but it does seek to modify the 1990 Settlement Agreement by eliminating the requirement to retire capital credits.<sup>11</sup>

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<sup>7</sup> Id., Item 7.

<sup>8</sup> Id., Item 2(b).

<sup>9</sup> Case No. 94-402, Application to Retain the Wholesale Power Reduction of East Kentucky Power, Inc. in PSC Case No. 94-336.

<sup>10</sup> Case No. 94-402, Response to November 22, 1994 Order, Item 9, page 1 of 2.

<sup>11</sup> Case No. 94-402, Application, Part 12(b), at 4.

The application represents the second time Nolin has asked the capital credit payment be deferred until its board of directors determines that it is financially able to do so. As stated in the December 20, 1991 Order, the Commission is concerned that Nolin has not proposed a timetable under which it would make the 1994 retirements. Nolin's proposal to waive the requirement of payment until its board of directors determines that Nolin is financially able to do so raises the possibility that several years could pass before the retirement is made. Such an indefinite deferral of the payout might compound cash flow problems in future years and delay subsequent capital credit retirements. Such an open-ended request contradicts the purpose of the capital credit rotation provision in the 1990 Settlement Agreement, the systematic payment of capital credits to Nolin's members.

Based on the record, and being advised, the Commission finds that Nolin should be allowed to deviate from the Settlement Agreement only to the extent that the 1994 capital credit retirements will not be required to be paid in 1994. Nolin indicates that after its deferred power bill is paid in full by April 1, 1995,<sup>12</sup> it will be able to draw on its CFC line of credit. Nolin should make arrangements to pay its 1994 retirements, by designating loan advances, obtaining short-term borrowings, or other means, as expeditiously as possible but in no event later than April 30, 1995. Nolin should file, within 10 days of the 1994

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<sup>12</sup> Response to November 22, 1994 Order, Item 1.

capital credit retirement payments, information describing how it funded the payments.

IT IS THEREFORE ORDERED that:

1. Nolin's request to deviate from the October 31, 1990 Order which approved the October 11, 1990 Settlement Agreement be and it hereby is granted to the limited extent that the 1994 capital credit retirements shall be made no later than April 30, 1995.

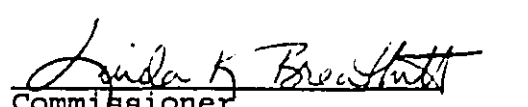
2. Within 10 days from the date the 1994 capital credit retirement payments are made, Nolin shall file information describing how it funded the payments.

Done at Frankfort, Kentucky, this 13th day of March, 1995.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director